

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHN DOE,

Plaintiff,

v.

UNIVERSITY OF MICHIGAN, et al.,

Defendants.

: Case No. 18-cv-11776

:

: Hon. Arthur J. Tarnow

: Mag. Elizabeth A. Stafford

:

: **DEFENDANTS' MOTION**

: **FOR LEAVE TO FILE A**

: **SUR-REPLY TO**

: **PLAINTIFF'S REPLY IN**

: **SUPPORT OF HIS MOTION**

: **FOR PARTIAL SUMMARY**

: **JUDGMENT**

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Defendants respectfully move for leave to file a two-page sur-reply to plaintiff's reply in support of his motion for partial summary judgment (ECF No. 62) to address plaintiff's new request for retrospective relief. In support of this motion, defendants rely upon the attached brief in support. Defendants' proposed sur-reply is attached as Exhibit A to this motion.

Counsel for defendants conferred with counsel for plaintiff on July 17, 2019 and explained the nature of this motion and its legal basis. Counsel for defendants requested, but did not obtain, concurrence in the relief sought in this motion.

WHEREFORE, defendants respectfully request that the Court grant defendants leave to file the sur-reply attached as Exhibit A to this motion.

Respectfully submitted,

July 17, 2019

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: **DEFENDANTS' BRIEF IN**

: **SUPPORT OF THEIR**

: **MOTION FOR LEAVE TO**

: **FILE A SUR-REPLY TO**

: **PLAINTIFF'S REPLY IN**

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STATEMENT OF THE ISSUE PRESENTED

Should the Court grant defendants leave to file a two-page sur-reply to address plaintiff's new request for retrospective relief raised for the first time in his reply in support of his motion for partial summary judgment (ECF No. 62)?

Defendants assert that the answer is "Yes."

CONTROLLING AUTHORITY

Seay v. Tenn. Valley Auth., 339 F.3d 454 (6th Cir. 2003)

ARGUMENT

Doe's motion for partial summary judgment seeks solely equitable and *prospective* relief. (See ECF No. 53 at 8-9.) But in his reply,¹ Doe asserts for the first time that he "is entitled to an order" for *retrospective* relief declaring that "the 2018 Policy imposed upon Plaintiff was unconstitutional." (ECF No. 62 at 1.) The Court should grant defendants leave to file a short sur-reply to address Doe's new request for retrospective relief. *See Seay v. Tenn. Valley Auth.*, 339 F.3d 454, 481-82 (6th Cir. 2003) ("It is only logical that . . . where the moving party submits in a reply brief new reasons . . . in support of its motion for summary judgment . . . [that] a district court . . . allow the nonmoving party an opportunity to respond."). Defendants' proposed sur-reply is attached as Exhibit A to their motion.

CONCLUSION

Defendants respectfully request that the Court grant defendants leave to file the sur-reply attached as Exhibit A to their motion.

¹ Without obtaining this Court's leave, Doe filed a reply that exceeds by a full page the 7-page limitation on reply briefs. *See* LR 7.1(d)(3)(B).

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CERTIFICATE OF SERVICE

I hereby certify that on July 17, 2019, I electronically filed the foregoing papers with the Clerk of the Court using the ECF system which will send notification of such filing to:

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